CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 092

June 25, 1958

RECEIVERS, TRUSTEES, AND ASSIGNEES FOR BENEFIT OF CREDITORS: LIABILITY UNDER THE BANK AND CORPORATION TAX LAW

Syllabus:

(1) A receiver trustee or assignee of an insolvent corporation is subject to the provisions of the Bank and Corporation Tax Law as if the corporation itself would be were it operating normally.

(2) In absence of bad faith there is no personal liability on such persons for taxes under the Bank & Corporation Tax Law.

(3) The relative priority of claims in such proceedings is prescribed by statute.

Advice is requested regarding the rights of the Franchise Tax Board against receivers, trustees, and assignees as follows:

(1) Their liability to file returns and pay taxes for periods both before and after their appointment.

(2) The personal liability of such individuals in the event that distributions are made contrary to establish priorities.

(3) The relative priorities of claims in bankruptcy, receiverships, and assignments for benefit of creditors.

(1) A receiver, trustee or assignee in control of a corporation is subject to the franchise tax as if he were the corporation. The imposition of the tax on receivers, trustees, and assignees carries with it the obligation to make all returns required of taxpayers by the law. Regulation 25401 spells out this obligation. Liquidating activities can constitute "doing business" as that term is defined in the law, and if they do the tax can exceed the minimum. See Hise v McColgan, 24 C 2d 147; Appeal of Johnson Foundry and Machine Company, State Board of Equalization, November 17, 1948. Franchise taxes which are due when the receiver, trustee or assignee is appointed are to be paid in accordance with the priority of the tax claim. The taxes accruing during the period of administration are an expense of the administration which must be paid before the assets become available for distribution to creditors.

(2) There is no statutory basis for holding a receiver, trustee, or assignee personally liable under the Bank and Corporation Tax Law. Section 3472 of the

Civil Code provides specifically that an assignee is not personally liable if he acts in good faith. However, under Section 25961 of the Bank and Corporation Tax Law if a receiver, trustee, or assignee, wilfully refuses to file a return with intent to evade the tax, he would be guilty of a felony.

(3) Section 64(a) of the National Bankruptcy Act prescribes the order in which unsecured debts and other claims shall be paid. Tax claims of the State and Federal government are of equal dignity, ranking fourth in order of distribution behind administration expenses, wages, and certain costs of creditors. Under Section 67(b) statutory liens for taxes receive priority in payment over unsecured claims coming under Section 64(a). Priority is given to the lien which arose first in time irrespective of whether it has been perfected or has attached to specific property. United States v Sampsell, 153 F2d 731; Adams v O'Malley, 182 F2d 925. In non-bankruptcy proceedings where the taxpayer is insolvent Federal tax claims have priority over State claims. However, if the state obtains a lien prior to the time the Federal lien arises the state lien has priority. With the exception of wage claims, Franchise Tax Board liens have priority over other State liens provided our lien is recorded first.